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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,743	05/26/2000	Liliana George	2870/289	9794

26646 7590 03/13/2002

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EXAMINER

LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

TD-10

# Office Action Summary

Application No.

09/580,743

Applicant(s)

GEORGE ET AL

Examiner

LOVERING

Group Art Unit

1712

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on JAN. 3, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-43 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 19-30 is/are allowed.
- ☒ Claim(s) 1-6, 10-16, 31-33, 38 AND 43 is/are rejected.
- ☒ Claim(s) 7-9, 17, 18, 34-37 AND 39-42 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*loop* 2. ✓ Claims <sup>①</sup>4-6, 31 and 43 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Franco et al., 5,994,414, of record. The instantly claimed water thin oil-in-water emulsions and method of making them are anticipated by Franco et al. (especially Abstract; column 1, line 66 - column 4, line 21, particularly column 2, lines 29-52) or are at least clearly within the purview of Franco et al., and thus would have been obvious therefrom to one having ordinary skill in the art at the time applicants' invention was made. Addressing the 103 aspects of this ground of rejection: As to claim 4 herein, it would have been obvious to one skilled in the art at the time applicants' invention was made to omit the ethoxylated emulsifiers from the lotion formulation in column 2 of Franco et al., since it is evident from column 2, lines 15-28 and patent claim 1 that ethoxylated emulsifiers are not essential; and as to claim 6 herein, it would have been obvious to one skilled in the art at the time applicants' invention was made to lower the concentration of glycerol monoester to 0.5 wgt.% in view of patentees' suggestion in the sentence bridging columns 4 and 5.

3. Claims 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Franco et al. in view of Gabby et al., <sup>A</sup>

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3,936,391, of record. The especially pertinent portions of franco et al. are pointed out in the preceding paragraph. While Franco et al. don't disclose incorporating a polymer such as xanthan gum into their emulsions, it would have been obvious to one skilled in the art at the time applicants' invention was made to post-add the xanthan gum of Gabby et al. (Examples B-E) to the emulsions of Franco et al. to function as a stabilizer in view of the teachings of Gabby et al. (column 2, line 46 - column 3, line 5).

4. Claims 3, 13, 14, 31-33 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Franco et al. in view of Nagahama et al. 6,140,375, of record. The especially pertinent portions of Franco et al. are pointed out in paragraph 2 above. While Franco et al. may not disclose emulsions in which the emulsifiers are glycerol myristate or stearates and sucrose stearate, it would have been obvious to one skilled in the art at the time applicants' invention was made to apply the homogenizing process of Franco et al. to emulsions containing the above cited surfactants of Nagahama et al. to obtain stable water-thin emulsions having the advantages taught by Franco et al. (column 4, lines 9-22).

5. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco in view of Nagahama et al. as applied to claims 3, 13, 14, 31-33 and 38 above, and further in

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<sup>A</sup>view of Gabby et al. 3,936,391, of record. While the foregoing combination of Franco et al. and Nagahama does not disclose incorporating a polymer such as xanthan gum into their emulsions, it would have been obvious to one skilled in the art at the time applicants' invention was made to post-add the xanthan gum of Gabby et al. (Examples B-E) to emulsions of the above stated combination to function as a stabilizer in view of the teachings of Gabby et al. (column 2, line 46 - column 3, line 5).

6. Applicants' arguments filed January 3, 2002 have been fully considered but they are not deemed to be persuasive. While Franco et al. and the other references applied herein may not use the term "pseudoemulsifier", it is well-settled that a reference need not disclose a specific limitation in haec verba. See In re Bode et al. 193 USPQ 12, 13; and Ex parte Novitski, 26 USPQ 2d 1389. It is evident from the instant specification, page 5, lines 2-7 that glyceryl stearate <sup>(in Franco et al.)</sup> is a pseudoemulsifier of this case, applicants' assertion to the contrary notwithstanding. As to the rejections of paragraphs 3 and 4 above, the decaglycerol myristate and/or stearate and sucrose stearate used in combination by Nagahama et al. are pseudoemulsifiers according to the definition of applicants herein, <sup>and</sup> ~~then~~ Nagahama et al. do not require ethoxylated compounds. Gabby et al. does add xanthan gum as a stabilizer as stated above.

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7. Claims 7-9, 17, 18, 34-37 and 39-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the water-thin emulsions of claims 7-9, 17, 18 and 19-30 herein or the multiple emulsions of claims 34-37 and 39-42 herein.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
March 12, 2002

*Richard D. Lovering*  
RICHARD D. LOVERING  
PRIMARY EXAMINER  
GROUP 1200 1700